IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ petition No. 236 (S/S)2000

Pooran Singh --------- Petitioner

Vs.

State of Uttaranchal and others. ------ Respondents.

AND

Writ petition No. 1257 (S/S) 2001

Deewan singh & others ------ Petitioners

Vs.

State of U.P. and others. ------ Respondents.

AND

Writ petition No. 2039 (S/S) 2001

Kunwar Singh & others ------ Petitioners

Vs.

State of U.P. and others. ------- Respondents.

Hon'ble P.C. Verma, J.

By mean of these writ petitions, the petitioners have challenged the orders dated 06.09.2000 and 07.09.2000 passed by Executive Engineer, Provincial Division Pithoragarh whereby the regularisation orders passed earlier in favour of the petitioners have been cancelled on the ground that there was a clause in the regularisation orders that it could be cancelled if any direction for this purpose is issued from the Engineer-in-Chief.

The petitioners were working from 1975-1978 in the Department. Initially they were appointed as daily wager and they were working in different Division within Almora zone. The petitioners were thereafter appointed in work charge establishment between 1985-1988 and thereafter their services were regularised vide order dated 24.08.1999 pursuant to the Scheme framed by the Government. The Scheme for regularisation of work charge employees was framed on the direction of the Apex Court and the High Court and the Scheme was implemented vide G.O. dated 15.10.1997. In execution of the Scheme, claim of the petitioners for regularisation was considered by duly constituted Selection Committee and after selection, services of the petitioners were regularised by means of orders dated 24.08.1999 which are enclosed with the writ petitions. Regularisation order contained in annexure-1 is reproduced as under:-

"OFFICE OF EXECUTIVE ENGINEER

PROVINCIAL DIVISION, P.W.D. PITHORAGARH

Letter No. 249/16CE. Dated 24.08.1999.

OFFICE ORDER

Pursuant to G.O. No. 6398/23-7-17-55(Sa)/96 Lucknow dated 15.10.1997 and Letter No. 2810/29 W.C.-Ku./99 dated 28.07.1999 issued by Chief Engineer (Parvatiya Samanyay)) P.W.D. Almora and Letter No. 4933 E.B/126 E.B.-12/98 dated 12.08.1998 issued by Superintending Engineer XII Circle P.W.D. Pithoragarh a regularisation Selection Committee was constituted and selection was held on 3.8.199. According to the select list and the District level seniority list, services of Sri Pooran Singh S/o Sri Soban Singh, Beldar in the work charge establishment in Construction Division P.W.D., Askot are regularised against the vacant post (resultant vacancy) in the scale of Rs. 2550-55-2660-60-3200. After joining pursuant to this order, the Dearness Allowance and other allowances sanctioned by the State Government from time to time shall be payable to him and his age of superannuation shall be 58 years, In case any direction/order to the contrary is issued by the Engineer-in-Chief, this order of regularisation can be cancelled and no claim of the employee shall be maintainable.

After regularisation, his appointment in regular establishment is made with the following conditions:

1. His appointment shall be purely temporary and if some senior person is left out, in that event this order shall automatically stand cancelled.

2. His services are liable to be terminated by the Appointing Authority/Executive Engineer after giving one month's written order. The Appointing Authority/Executive Engineer may terminate the services by giving salary in lieu of notice and the employee may resign after giving one month's notice and if such notice is for less than a month, in that event salary for the said period shall be payable by the employee to the State Government.

3. His services are liable to be transferred anywhere in Uttarakhand Region.

4. He shall not be paid any Travelling Allowance for joining after regularisation.

5. In case of failure to join within a week after receipt of the regularisation order, this order shall stand automatically cancelled.

6. The employee shall be required to submit following certificates alongwith his joining report:

    1. Medical certificate from District Chief Medical Officer wherein it should be certified that he is medically fit for Govt. Services.
    2. Characteer certificate issued by District Magistrate which should not be more than six months old.
    3. Date of birth/Educational qualification certificate.
    4. Married/unmarried certificate. In case of married, certificate that he has only one wife.

5. There should be no Department enquiry/enquiry under CCA Rules pending against the employee. In case of any enquiry, his appointment shall be cancelled.

Executive Engineer,

Provincial Division P.W.D., Pithoragarh."

The cancellation orders, which are similar, are enclosed as annexures to the writ petitions. One such cancellation order passed in respect of Sri Pooran Singh which is Annexure-2 to the writ petition is reproduced as under:

"OFFICE OF EXECUTIVE ENGINEER

PROVINCIAL DIVISION P.W.D. PITHORAGARH.

Letter No. 2631/6-A.Dhi (1) Dated 07.09.2022

OFFICE ORDER

Pursuant to Letter No. 2819/29 W.C-Ku./99 dated 28.07.1999 issued by Chief Engineer (Parvatiya Samanyaya) P.W.D. Almora, Sri Pooran Singh S/o Sri Soban Singh was regularised on the post of Beldar against the post allotted to District Pithoragarh vide Office Order No. 2491/16 C.E. dated 24.08.1999 with the condition that in the event of any directions issued to the contrary by the Chief Engineer, the regularisation can be cancelled and no claim of the employee shall be maintainable. Since the Chief Engineer (Kumaun Prabhag) Almora vide Letter No. 3565/29 W.C-Kumaun/99 dated 10.04.2000 has re-allotted the post to this District and pursuant to Letter No. 9786/29 W.C-Ku./2000 dated 09.08.2000 and Letter No. 4429/29 W.C-Ku./2000 dated 14.08.2000, the regularisation order passed in favour of Sri Pooran Singh S/o Sri Soban Singh is recalled and he is reverted to temporary work charge establishment with effect from 24.08.1999. He shall be entitled to monetary benefits admissible under Para 667 of Financial Hand Book Part-VI.

Executive Engineer,

Provincial Division P.W.D., Pithoragarh."

Heard Sri Manoj Tewari, learned counsel for the petitioner and learned Standing Counsel for the State.

Learned counsel for the petitioners submits that the cancellation orders are bad in law as the same have been passed without affording any opportunity of hearing to the petitioners and they are also in violation of condition No.2 of the regularisation orders in as much as the cancellation orders have been passed without issuing one month's notice as specified in the said condition. He further submitted that once regularisation orders were passed in compliance of Govt. Order dated 15.10.1997, the direction issued by the Chief Engineer to cancel

the regularisation orders on the ground of shortage of vacancy in the District is unwarranted as the P.W.D. functions throughout the State. If there is shortage of vacancy in District Pithoragarh, the petitioners could have been accommodated in other District of the State.

Learned standing counsel appearing for the State, submitted that cancellation orders have been passed according to the terms and conditions contained in the regularisation order dated 24.08.1999 on account of shortage of post in the district after reallocation.

It is not disputed that the cancellation orders has been passed without any notice or pay in lieu of notice as required in condition No.2 of the regularisation orders contained in annexure No.1, therefore, cancellation orders have been passed without affording any opportunity of hearing to the petitioners. As the regularisation orders were passed in implementation of the Scheme contained in Govt. Ordeer dated 15.10.1997 after due selection and the petitioners were regularised against the then existing posts, as such, the reason assigned for cancellation that posts have been reallocated by the Chief Engineer vide order dated 10.04.2000 is not acceptable.

No doubt, the Chief Engineer could reallocate the petitioners on the basis of re-allotment of posts and the petitioners could be transferred to the District where the posts were transferred. The regularisation orders passed in favour of the petitioners could not be cancelled merely due to re-allocation of posts. Moreover, the rights accrued in favour of the petitioner by virtue of substantive appointment could not be divested without hearing them merely because the posts were reallocated. The cancellation orders have been passed in violation of condition No.2 of the regularisation order without issuing any notice to the petitioners.

On account of cancellation of regularisation, the petitioners have suffered civil consequences, therefore, the cancellation orders could not have been passed without affording opportunity of hearing to the petitioners as held by the **Apex Court in Basudeo Tewary Vs. Sido Kanhu University and others (1998) 8 S.C.C. 194. In**

Gajanan L. Parnekar Vs. State of Goa and another (1998) 8 S.C.C., the Apex Court held that recall of order of absorption without giving notice or opportunity of hearing is violative of principles of natural justice.

Thus, the orders of cancelling passed against the petitioners deserve to be quashed and the writ petitions deserve to be allowed.

Accordingly, writ of certiorari quashing the orders of cancellation dated 06.09.2000 and 07.09.2000 is issued. Petitioners shall be treated to be regular in service from the date they were regularised i.e. 24.08.1999. No order as to costs. Recovery, if any, shall not be made.

(P.C. Verma, J.)

September 25, 2003

NCM: